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AZ CORP COMMISSION
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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF ARIZONA PUBLIC SERVICE
COMPANY FOR A HEARING TO
DETERMINE THE FAIR VALUE OF THE
UTILITY PROPERTY OF THE COMPANY
FOR RATEMAKING PURPOSES, TO FIX A
JUST AND REASONABLE RATE OF
RETURN THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP
SUCH RETURN

Docket No. E-01345A-08-0172

**POST-HEARING REPLY BRIEF
OF FREEPORT-MCMORAN
COPPER & GOLD INC. AND
ARIZONANS FOR ELECTRIC
CHOICE AND COMPETITION**

Freeport-McMoRan Copper & Gold Inc. and Arizonans for Electric Choice and Competition (hereafter collectively "AECC") hereby submit their Post-Hearing Reply Brief in connection with the above captioned matter. AECC will reply to only two issues that were addressed by some of the Parties in their Post-Hearing Opening Briefs.

The first issue involves the request made by Chief Administrative Law Judge Lyn Farmer at the conclusion of the Evidentiary Hearing for the Parties to brief the issue of whether the requirement for unbundled rates also requires that Arizona Public Service Company ("APS") present each unbundled component on customer electric bills. For the reasons set forth below, it is the position of AECC that APS should be required to continue presenting each unbundled rate component on customer electric bills.

1 The specific breakdown of billing components on an electric customer's bill is
2 partly the result of the Arizona Corporation Commission's ("Commission") efforts to
3 restructure the electric industry by introducing retail electric competition in incumbent
4 affected utilities' service areas. Although the requirement is found in the Electric Retail
5 Competition Rules ("Rules"), some of which were later invalidated by the courts, the
6 issue of unbundling for APS has also been part of Commission rate case orders.
7 Specifically, Decision No. 67744 (April 7, 2004), which was rendered **after** a portion of
8 the Rules were invalidated, provided for the unbundling of tariffs in general in order to
9 give customers "appropriate price signals necessary for shopping." (Decision No. 67744
10 at p. 31, ll. 21-23.) It logically follows that, if customers are to be given the appropriate
11 price signals for shopping, customer electric bills should also be unbundled.

12 As Commission Staff points out in its Initial Post-Hearing Brief, "to the extent that
13 changing APS' billing format may implicate previous Commission decisions, it is possible
14 that A.R.S. § 40-252 may be implicated as well." AECC asserts that an A.R.S. § 40-252
15 proceeding would be necessary, especially since there was absolutely no evidence
16 presented during settlement negotiations or at the evidentiary hearing on the issue of APS'
17 billing format.

18 The only reference during the evidentiary hearing to the APS billing format was a
19 question from Chief Administrative Law Judge Lyn Farmer to APS Witness David
20 Rumolo as follows: "Q. Is there anything that APS can do to maybe make their bill a
21 little bit easier to understand?" (Tr. at p.2225, ll. 22, 23.) Mr. Rumolo answered as
22 follows: "A. Well, unfortunately all the elements that are on the bill . . . are actually
23 required under the competition rules of the Commission so that we don't really have any
24 choice to providing that detail." (Tr. at p. 2225, l. 24 to p. 2226, l. 8.)

25 According to Commission Staff and APS, A.A.C. R14-2-1612(O) sets forth
26 specific billing requirements in anticipation of the transition to competitive retail markets.

1 Although this rule was subsequently invalidated in the court decision *Phelps Dodge v.*
2 *Arizona Elec. Power Coop.*, 207 Ariz. 95, 83 P.3d 573 (App. 2004) due to non-
3 certification by the Arizona Attorney General, the Commission is still considering
4 whether to certify the Rules, or a modified version thereof, in a pending matter,
5 Application of Sempra Energy Solutions for a Certificate Of Convenience and Necessity
6 for Competitive Retail Electric Services (E-03964A-06-0168).¹ According to Decision
7 No. 70485 (September 3, 2008), Commission Staff is required to submit a report to the
8 Commission by December 31, 2009 that recommends whether retail electric competition
9 should be implemented in Arizona and if so, how such implementation should proceed.

10 In order to facilitate retail electric competition and direct access, the designation of
11 unbundled charges on customer bills will be necessary in order for customers to make
12 informed choices. AECC continues to support the implementation of electric retail
13 competition in Arizona, and has been involved in several proceedings addressing the
14 issue. This APS rate case settlement proceeding is not one of them. Therefore, changing
15 APS' current billing format without a hearing process would not only violate AECC's due
16 process, but would also be premature and prejudicial in light of the Commission's
17 consideration in Docket No. E-03964A-06-0168 of whether retail electric competition
18 should move forward in Arizona. As APS points out in its Initial Post-Hearing brief,
19 A.A.C. R14-2-210(B)(k) currently requires that residential service bills must contain
20 information regarding "Other unbundled rates and charges."² Furthermore, good public
21 policy supports the inclusion of more information for customers who want to know what
22 they are paying for. While AECC is sympathetic to those few customers who voiced
23 confusion over APS' current billing format during public comment, the Commission must

24 ¹ There is pending an additional application involving the provision of competitive retail
25 electric services in Arizona: The Application of PDM Energy, L.L.C., for a Certificate of
26 Convenience and Necessity To Provide Competitive Retail Electric Services in Arizona
(E-03869A-06-0470).

² A.A.C. R14-2-1601(44.) defines "Unbundled Service."

1 recognize that the purpose of providing customers detailed information on unbundled
2 rates and charges is to allow them to make informed choices to manage costs even in the
3 absence of retail electric competition; choices such as time of use rates, annualized level
4 billing plans or the integration of renewable applications (i.e. solar rooftops or solar water
5 heaters) to reduce reliance on traditional generation resources.

6 AECC submits that in addition to an A.R.S. § 40-252 proceeding, or subsequent
7 decision in another proceeding affecting the implementation of retail electric competition
8 in Arizona, the Commission would have to grant a waiver from A.A.C. R14-2-210(B)(k)
9 or amend the Rules. In either case, AECC would oppose the grant of the waiver or an
10 amendment to the Rules.

11 The second issue involves (1) the provision in the Settlement Agreement that
12 proposes to maintain the Commissions' policy regarding customer payments for line
13 extensions and which is set forth in APS Service Schedule 3 (with modifications proposed
14 in the Settlement Agreement) requiring an APS residential customer seeking a line
15 extension to bear the full cost of the line extension; and (2) the provision in the Settlement
16 Agreement that treats the proceeds from line extensions as revenue by APS. Intervenor
17 Barbara Wyllie-Pecora ("Intervenor Pecora") was the only party who opposed these
18 provisions of the Settlement Agreement.

19 AECC does not agree with the position asserted or argued for by Intervenor Pecora
20 on the Schedule 3 issues. AECC will not restate its position and arguments in support of
21 the Commission's current rule relating to line extensions and its arguments relating to the
22 treatment of the line extension proceeds as revenues that were set forth in AECC's Post-
23 Hearing Brief relating to these issues in this Reply Brief, but, by this reference,
24 incorporate them herein.

25 However, as additional argument in opposition to the matters set forth in Intervenor
26 Pecora's Post-Hearing Brief, AECC contends that there is no credible evidence to support

1 the arguments of Intervenor Pecora that the alleged detrimental impact on tax benefits or
2 other economic benefits resulting from the Commission's policy on line extensions would
3 actually result in a loss to the state of such benefits if homes were not constructed in the
4 rural areas of the state, especially in light of the existence of thousands of vacant homes
5 throughout the state already constructed that could be occupied and produce such benefits.

6 Further, Intervenor Pecora failed to show, and the evidence does not support, the
7 reasons asserted for the lack of the construction of homes in the rural areas of the state.
8 The substantial slow-down in economic activity in Arizona and throughout the nation is,
9 undoubtedly, a major reason for the lack of development and home construction in the
10 rural areas of Arizona. In addition, there was no evidence presented at the hearing of the
11 ability of land owners in the rural areas to be able to financially provide personal funds or
12 to obtain such funds from financial institutions to construct homes in the rural areas of the
13 state in light of today's present economic environment.

14 Any change to the treatment of Service Schedule 3 or the treatment of line
15 extension proceeds as revenue as provided for in the Settlement Agreement would be a
16 material change to the Agreement.

17 AECC, as a signatory to the Settlement Agreement, recommends that the
18 Agreement be approved by the Commission as presented to the Commission as a package.

19 RESPECTFULLY SUBMITTED this 23rd day of October 2009.

20 FENNEMORE CRAIG, P.C.

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